

## **Article VIII Judicial Department**

### **Article VIII, Section 1 [Judicial powers -- Courts.]**

The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts designated by statute shall be courts of record. Courts not of record shall also be established by statute.

### **Article VIII, Section 2 [Supreme court -- Chief justice -- Declaring law unconstitutional -- Justice unable to participate.]**

The Supreme Court shall be the highest court and shall consist of at least five justices. The number of justices may be changed by statute, but no change shall have the effect of removing a justice from office. A chief justice shall be selected from among the justices of the Supreme Court as provided by statute. The chief justice may resign as chief justice without resigning from the Supreme Court. The Supreme Court by rule may sit and render final judgment either en banc or in divisions. The court shall not declare any law unconstitutional under this constitution or the Constitution of the United States, except on the concurrence of a majority of all justices of the Supreme Court. If a justice of the Supreme Court is disqualified or otherwise unable to participate in a cause before the court, the chief justice, or in the event the chief justice is disqualified or unable to participate, the remaining justices, shall call an active judge from an appellate court or the district court to participate in the cause.

### **Article VIII, Section 3 [Jurisdiction of Supreme Court.]**

The Supreme Court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The Supreme Court shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause.

### **Article VIII, Section 4 [Rulemaking power of Supreme Court -- Judges pro tempore -- Regulation of practice of law.]**

The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the Rules of Procedure and Evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature. Except as otherwise provided by this constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah. The Supreme Court by rule shall govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

### **Article VIII, Section 5 [Jurisdiction of district court and other courts -- Right of appeal.]**

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

**Article VIII, Section 6 [Number of judges of district court and other courts -- Divisions.]**

The number of judges of the district court and of other courts of record established by the Legislature shall be provided by statute. No change in the number of judges shall have the effect of removing a judge from office during a judge's term of office. Geographic divisions for all courts of record except the Supreme Court may be provided by statute. No change in divisions shall have the effect of removing a judge from office during a judge's term of office.

**Article VIII, Section 7 [Qualifications of justices and judges.]**

Supreme court justices shall be at least 30 years old, United States citizens, Utah residents for five years preceding selection, and admitted to practice law in Utah. Judges of other courts of record shall be at least 25 years old, United States citizens, Utah residents for three years preceding selection, and admitted to practice law in Utah. If geographic divisions are provided for any court, judges of that court shall reside in the geographic division for which they are selected.

**Article VIII, Section 8 [Vacancies -- Nominating commissions -- Senate approval.]**

- (1) When a vacancy occurs in a court of record, the governor shall fill the vacancy by appointment from a list of at least three nominees certified to the governor by the Judicial Nominating Commission having authority over the vacancy. The governor shall fill the vacancy within 30 days after receiving the list of nominees. If the governor fails to fill the vacancy within the time prescribed, the chief justice of the Supreme Court shall within 20 days make the appointment from the list of nominees.
- (2) The Legislature by statute shall provide for the nominating commissions' composition and procedures. No member of the Legislature may serve as a member of, nor may the Legislature appoint members to, any Judicial Nominating Commission.
- (3) The Senate shall consider and render a decision on each judicial appointment within 60 days of the date of appointment. If necessary, the Senate shall convene itself in extraordinary session for the purpose of considering judicial appointments. The appointment shall be effective upon approval of a majority of all members of the Senate. If the Senate fails to approve the appointment, the office shall be considered vacant and a new nominating process shall commence.
- (4) Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration.

**Article VIII, Section 9 [Judicial retention elections.]**

Each appointee to a court of record shall be subject to an unopposed retention election at the first general election held more than three years after appointment. Following initial voter approval, each Supreme Court justice every tenth year, and each judge of other courts of record every sixth

year, shall be subject to an unopposed retention election at the corresponding general election. Judicial retention elections shall be held on a nonpartisan ballot in a manner provided by statute. If geographic divisions are provided for any court of record, the judges of those courts shall stand for retention election only in the geographic division to which they are selected.

**Article VIII, Section 10 [Restrictions on justices and judges.]**

Supreme court justices, district court judges, and judges of all other courts of record while holding office may not practice law, hold any elective nonjudicial public office, or hold office in a political party.

**Article VIII, Section 11 [Judges of courts not of record.]**

Judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by statute. However, no qualification may be imposed which requires judges of courts not of record to be admitted to practice law. The number of judges of courts not of record shall be provided by statute.

**Article VIII, Section 12 [Judicial Council -- Chief justice as administrative officer -- Legal counsel.]**

- (1) There is created a Judicial Council which shall adopt rules for the administration of the courts of the state.
- (2) The Judicial Council shall consist of the chief justice of the Supreme Court, as presiding officer, and other justices, judges, and other persons as provided by statute. There shall be at least one representative on the Judicial Council from each court established by the Constitution or by statute.
- (3) The chief justice of the Supreme Court shall be the chief administrative officer for the courts and shall implement the rules adopted by the Judicial Council.
- (4) The Judicial Council may appoint legal counsel which shall provide all legal services for the Judicial Department unless otherwise provided by statute.

**Article VIII, Section 13 [Judicial Conduct Commission.]**

A Judicial Conduct Commission is established which shall investigate and conduct confidential hearings regarding complaints against any justice or judge. Following its investigations and hearings, the Judicial Conduct Commission may order the reprimand, censure, suspension, removal, or involuntary retirement of any justice or judge for the following:

- (1) action which constitutes willful misconduct in office;
- (2) final conviction of a crime punishable as a felony under state or federal law;
- (3) willful and persistent failure to perform judicial duties;
- (4) disability that seriously interferes with the performance of judicial duties; or
- (5) conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Prior to the implementation of any commission order, the Supreme Court shall review the commission's proceedings as to both law and fact. The court may also permit the introduction of additional evidence. After its review, the Supreme Court shall, as it finds just and proper, issue its order implementing, rejecting, or modifying the commission's order. The

Legislature by statute shall provide for the composition and procedures of the Judicial Conduct Commission.

**Article VIII, Section 14 [Compensation of justices and judges.]**

The Legislature shall provide for the compensation of all justices and judges. The salaries of justices and judges shall not be diminished during their terms of office.

**Article VIII, Section 15 [Mandatory retirement.]**

The Legislature may provide standards for the mandatory retirement of justices and judges from office.

**Article VIII, Section 16 [Public prosecutors.]**

The Legislature shall provide for a system of public prosecutors who shall have primary responsibility for the prosecution of criminal actions brought in the name of the State of Utah and shall perform such other duties as may be provided by statute. Public prosecutors shall be elected in a manner provided by statute, and shall be admitted to practice law in Utah. If a public prosecutor fails or refuses to prosecute, the Supreme Court shall have power to appoint a prosecutor pro tempore.